

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

HEIDI HAZELQUIST,

Plaintiff,

v.

OFFICER STEPHAN,¹ OFFICER
KLEWIN, PAT HULL, and
WASHINGTON STATE PATROL,

Defendants.

NO: 2:14-CV-0073-TOR

ORDER GRANTING MOTIONS FOR
SUMMARY JUDGMENT

BEFORE THE COURT are Defendants Washington State Patrol and Dustin Stephan's Motion and Memorandum for Summary Judgment (ECF No. 60) and Defendant Pat Hull's Motion for Summary Judgment (ECF No. 66). These matters were submitted for consideration without oral argument. Richard D. Wall

¹ The Clerk of Court shall modify the docket to reflect the correct spelling of Officer Stephan's name.

1 represents Plaintiff. Carl P. Warring represents Defendants Washington State
2 Patrol and Dustin Stephan. Paul L. Kirkpatrick and Timothy J. Nault represent
3 Defendant Patricia Hull. The Court has reviewed the briefing and the record and
4 files herein, and is fully informed.

5 **BACKGROUND**

6 Plaintiff, initially proceeding *pro se*, filed her Complaint in this action on
7 March 28, 2014.² Plaintiff asserts that, after a traffic stop, she was unlawfully
8 arrested and involuntarily committed to a mental health facility. ECF No. 9. This
9 Court construes Plaintiff as alleging state law claims for defamation, malicious
10 prosecution, assault, and false imprisonment, as well as federal claims under 42
11 U.S.C. § 1983 for false arrest and involuntary commitment. In the instant motions,
12 certain Defendants move for summary judgment on all claims.³ ECF Nos. 60, 66.
13 For the reasons discussed below, this Court grants these motions.

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16 ² Although Plaintiff has repeatedly moved for leave to file an amended complaint,
17 which motions this Court has granted, Plaintiff has either withdrawn her motions
18 or failed to file an amended complaint. *See* ECF Nos. 17, 20, 21, 23, 44, 45.

19 ³ Defendant Officer Klewin has not filed his own motion for summary judgment or
20 otherwise joined the moving Defendants' motions.

FACTS⁴

On September 5, 2011, Defendant Stephan stopped Plaintiff Heidi Hazelquist at the east bound I-90 on ramp near Ritzville, Washington. ECF Nos. 61 at 7; 75 at 1-2; 77 at 2; 82 at 2. According to Defendant Stephan's Patrol Report, he observed Plaintiff using her cell phone while operating a motor vehicle, driving her vehicle into the oncoming lane of traffic, and driving her vehicle from the right lane of the freeway to the middle lane without use of her turn signal. ECF No. 61 at 7. Plaintiff admits that she "swerved" while entering the freeway, attributing her behavior to a cup of spilled coffee. ECF Nos. 3 at 2; 82 at 2.

When Defendant Stephan made contact with Plaintiff, he noticed she spoke with slurred speech. ECF Nos. 61 at 7; 75 at 2. Plaintiff indicated that she suffered from a disability, which adversely affected her speech and balance. ECF Nos. 61 at 7; 77 at 1-2; 82 at 1-2. Plaintiff contends she tried to show her disability card to Defendant Stephan but he refused to look at it, ECF No. 82 at 3; Defendant Stephan asserts that Plaintiff was unable to produce any documentation of her

⁴ The following are the undisputed material facts unless otherwise noted. A statement in a complaint may serve as a judicial admission unless the party explains the error in a subsequent pleading or by amendment. *Sicor Ltd. v. Cetus Corp.*, 51 F.3d 848, 859 (9th Cir. 1995).

1 condition, ECF Nos. 61 at 7 (noting that the disability card Plaintiff presented did
2 not list her disabilities); 75 at 2.

3 Defendant Stephan asked Plaintiff to step out of her car. ECF Nos. 61 at 7;
4 75 at 2; 77 at 2; 82 at 2. According to his Patrol Report, Defendant Stephan
5 observed that Plaintiff “staggered and swayed crossing her feet and was unable to
6 walk in a straight line.” ECF No. 61 at 7. Defendant Stephan asked Plaintiff if she
7 would be willing to perform field sobriety tests, which request she declined in light
8 of her coordination issues. ECF No. 61 at 7, 26; *see* ECF No. 82 (failing to
9 dispute).

10 Defendant Stephan ultimately arrested Plaintiff for driving under the
11 influence of drugs. ECF Nos. 61 at 8, 14, 17; 75 at 3; 82 at 2. Once in the patrol
12 vehicle, Plaintiff consented to a portable breath test, which registered a reading of
13 .000. ECF Nos. 61 at 8; 75 at 3; 77 at 2; 82 at 2. Defendant Stephan then
14 transported Plaintiff to a local hospital for a blood draw, which test similarly
15 showed no intoxicants in Plaintiff’s system. ECF Nos. 75 at 4; 77 at 2. Plaintiff
16 was subsequently released from custody and transported to a nearby hotel. ECF
17 Nos. 61 at 8-9; 75 at 4; 77 at 2; 82 at 3.

18 Approximately one hour later, Defendant Stephan received a report that a
19 woman matching Plaintiff’s description was located on an I-90 overpass. ECF
20 Nos. 61 at 9; 75 at 4. Defendant Stephan and Trooper Herrington again made

1 contact with Plaintiff, observing her leaning over the concrete barrier. ECF Nos.
2 61 at 9; 75 at 4. According to his Patrol Report, Defendant Stephan thought
3 Plaintiff may have been contemplating suicide and had allegedly been informed by
4 Trooper Herrington that Plaintiff said she was going to jump in front of a semi-
5 truck. ECF No. 61 at 9, 14. Plaintiff adamantly denies that she ever intended to
6 jump or said anything to that effect; however, her pleadings appear to concede that
7 she presented herself as someone that was contemplating jumping. ECF Nos. 77 at
8 3,5; 82 at 3; *see* ECF Nos. 9 at 3 (“I knew if I stood on the over pass, eventually
9 the police would come to prevent a person from jumping. They will help me direct
10 [Trooper Stephan’s] actions to internal affairs.”); 10 at 18 (“[I] knew [I] would be
11 there a while because if [I] stood on the over pass eventually [I] thought the police
12 would come to prevent a person from jumping.”). Indeed, in her Complaint,
13 Plaintiff asserts she told the arriving officers that she was “not going to jump off”
14 the overpass. ECF No. 9 at 3.

15 Trooper Herrington transported Plaintiff to East Adams Rural Hospital for
16 mental health evaluation.⁵ ECF Nos. 61 at 9, 14; 75 at 5; 77 at 3. Defendant
17 Patricia Hull, a Designated Mental Health Professional with Adams County, had

18 ⁵ According to her report, Trooper Herrington first attempted to book Plaintiff in
19 the Adams County jail but was advised that Plaintiff needed to first be medically
20 cleared. ECF No. 61 at 4.

1 received a request from law enforcement to evaluate Plaintiff. ECF No. 65-5 at 2-
2 3. Defendant Hull asserts that Washington State Patrol (“WSP”) informed her that
3 Plaintiff was contemplating suicide. ECF Nos. 65 at 3; 65-3 at 3 (“DMHP Hull
4 was requested for face to face evaluation of [Plaintiff] . . . after being found on
5 Highway overpass determining best way to commit suicide.”).

6 Defendant Hull interviewed Plaintiff, describing Plaintiff as “agitated and
7 angry” and “uncooperative.” ECF No. 65 at 3. In the course of her investigation,
8 Defendant Hull learned that Plaintiff had suffered a traumatic brain injury in 1997,
9 which left her with right side impairment, slurred speech, and poor coordination.
10 *Id.* at 4. Defendant Hull reported that Plaintiff confessed to difficulty sleeping,
11 past contemplations of suicide, and many stressors in her life. *Id.* Defendant Hull
12 also maintains that Plaintiff acknowledged her suicidal thoughts while standing on
13 the overpass. *Id.* Plaintiff adamantly denies having any suicidal thoughts or
14 confessing to such thoughts to Defendant Hull. ECF No. 77 at 4. The parties
15 dispute whether Defendant Hull ever spoke with Plaintiff about developing a crisis
16 plan. ECF Nos. 65 at 5; 77 at 3, 6.

17 Dr. Betty Mitchell, an emergency room physician, also examined Plaintiff
18 while she was at the hospital and similarly represents that Plaintiff was
19 contemplating suicide. ECF No. 65-4 at 6 (“Patient stated that she was at the
20 overpass/bridge contemplating/considering jumping in front of a truck to ‘end it

1 all.’ Then she decided that a truck was too ‘messy’ and not fair to truck driver so
2 then she mentioned sitting in front of a train instead. She stated several times that
3 she has seen the world and is ‘ready to go.’”).⁶ In her Complaint, Plaintiff
4 contends that Dr. Mitchell “misstates the words and meaning of the talk;” however,
5 she also concedes that she “elaborated on all the heavy issues [she] had lately.”
6 ECF No. 9 at 4-5. Defendant Hull took the observations of Dr. Mitchell into
7 consideration when determining whether to commit Plaintiff. ECF No. 65-6 at 6.⁷

8 ⁶ Plaintiff objects to these statements as inadmissible hearsay. However, these
9 statements are non-hearsay. First, any statements made by Plaintiff are admissible
10 as admissions by a party opponent. Fed. R. Evid. 801(d)(2)(A). Second, Dr.
11 Mitchell’s written statements are not presented to prove the truth of the matter
12 asserted but instead are used to show the effect of these statements on Defendant
13 Hull and her ultimate decision to commit. *See id.* at 801(c); *United States v.*
14 *Payne*, 944 F.2d 1458, 1472 (9th Cir. 1999) (explaining that out-of-court
15 statements introduced to show the effect on the listener, rather than to prove the
16 truth of the matter asserted, are non-hearsay statements).

17 ⁷ At some point during her hospital stay, Plaintiff asserts that she was “attacked
18 and thrown to the ground by a uniformed officer who had come into the waiting
19 room,” handcuffed, and attached to a gurney against her will. ECF No. 77 at 4. In
20 response, Defendant Hull explains that it was necessary to call in law enforcement

1 Based on Defendant Hull's interview and independent investigation, as well
2 as Dr. Mitchell's documented observations, Defendant Hull formed the provisional
3 diagnosis that Plaintiff suffered from major depression, recurrent, unspecified.
4 ECF No. 65 at 6. Defendant Hull recommended that Plaintiff be taken into
5 emergency custody in an evaluation and treatment facility for a period not to
6 exceed seventy-two hours pursuant to RCW 71.05. *Id.* Plaintiff was subsequently
7 transferred to Lourdes Counseling Center in Richland, Washington. ECF Nos. 65-
8 5 at 8; 77 at 4. In her Petition for Initial Detention, filed September 6, 2011, with
9 Adams County Superior Court, Defendant Hull stated the following facts in
10 support of her conclusion that Plaintiff presented a serious likelihood of harm to
11 herself:

12 [Plaintiff's] story is inconsistent and contradictory. [She] claimed to
13 have left the motel in search of 'Rockstar drink' but was found in
14 opposite direction of motel past the places to purchase drinks. She
15 states she was at the overpass evaluating best place & method to
16 commit suicide. 'I don't want to land on a truck, I want to land in
front of the truck.' While respondent reports she [was] willing to
develop a safety plan she is refusing to engage in the process such as
notifying family developing a support system. [Plaintiff] has
attempted to leave the hospital & required restraints.

17 to restrain Plaintiff as she attempted to leave. ECF Nos. 65 at 6; 65-3 at 28 ("[I]t
18 was necessary to request a police officer to stand by, [Plaintiff] still attempted to
19 leave and the officer used handcuffs to restrain her. When the officer needed to
20 leave the hospital, the doctor ordered restraints.").

1 ECF No. 69-4 at 2.

2 On March 28, 2014, Ms. Hazelquist filed the instant lawsuit. In her briefing,
3 Plaintiff has conceded that several of her claims are barred.⁸ This Court considers
4 the following claims: (1) a section 1983 claim against Defendant Stephan for
5 unlawful seizure; (2) a section 1983 claim against Defendant Hull for involuntary
6 confinement; and (3) state law claims against Defendants WSP, Stephan, and Hull
7 for malicious prosecution. ECF No. 9.

8 DISCUSSION

9 Summary judgment may be granted to a moving party who demonstrates
10 “that there is no genuine dispute as to any material fact and the movant is entitled
11 to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party bears the
12 initial burden of demonstrating the absence of any genuine issues of material fact.

13 ⁸ Plaintiff’s Complaint can be construed to allege state law claims for defamation,
14 assault, and false imprisonment; however, as Plaintiff has conceded in her briefing,
15 these claims are barred by Washington’s two-year statute of limitations. ECF Nos.
16 83 at 1; 76 at 1; *see* RCW 4.16.100(1); *Unisys Corp. v. Senn*, 99 Wash.App. 391,
17 397-98 (2000). Plaintiff further concedes that her claims pursuant to 42 U.S.C.
18 § 1983 against WSP are barred by the Eleventh Amendment. ECF No. 83 at 1; *see*
19 U.S. Const. Amend. XI; *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 54 (1996);
20 *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 63-64 (1989).

1 *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the
2 non-moving party to identify specific facts showing there is a genuine issue of
3 material fact. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986).
4 “The mere existence of a scintilla of evidence in support of the plaintiff’s position
5 will be insufficient; there must be evidence on which the [trier-of-fact] could
6 reasonably find for the plaintiff.” *Id.* at 252.

7 For purposes of summary judgment, a fact is “material” if it might affect the
8 outcome of the suit under the governing law. *Id.* at 248. A dispute concerning any
9 such fact is “genuine” only where the evidence is such that the trier-of-fact could
10 find in favor of the non-moving party. *Id.* “[A] party opposing a properly
11 supported motion for summary judgment may not rest upon the mere allegations or
12 denials of his pleading, but must set forth specific facts showing that there is a
13 genuine issue for trial.” *Id.* (internal quotation marks omitted); *see also First Nat’l*
14 *Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288-89 (1968) (holding that a party
15 is only entitled to proceed to trial if it presents sufficient, probative evidence
16 supporting the claimed factual dispute, rather than resting on mere allegations).
17 Moreover, “[c]onclusory, speculative testimony in affidavits and moving papers is
18 insufficient to raise genuine issues of fact and defeat summary judgment.”
19 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). In ruling
20 upon a summary judgment motion, a court must construe the facts, as well as all

1 rational inferences therefrom, in the light most favorable to the non-moving party,
2 *Scott v. Harris*, 550 U.S. 372, 378 (2007), and only evidence which would be
3 admissible at trial may be considered, *Orr v. Bank of Am., NT & SA*, 285 F.3d 764,
4 773 (9th Cir. 2002).

5 **A. Section 1983 Claims**

6 Based on this Court's reading of Plaintiff's Complaint, this Court discerns
7 two causes of action under 42 U.S.C. § 1983: unlawful seizure under the Fourth
8 Amendment against Defendant Stephan⁹ and involuntary commitment under the

9
10 ⁹ Despite Defendant Stephan's invocation of the Eleventh Amendment, "it has
11 been settled that the Eleventh Amendment provides no shield for a state official
12 confronted by a claim that he deprived another of a federal right under the color of
13 state law." *Hafer v. Melo*, 502 U.S. 21, 30 (1991) ((quoting *Scheuer v. Rhodes*,
14 416 U.S. 232, 237 (1974)). "That is, the Eleventh Amendment does not erect a
15 barrier against suits to impose 'individual and personal liability' on state officials
16 under § 1983." *Id.* at 30-31 (quoting *Scheuer*, 416 U.S. at 238). Defendant
17 Stephan is not sued in his official capacity and is thus properly subject to a section
18 1983 personal-capacity suit. *See id.* at 26 ("[T]he phrase 'acting in their official
19 capacities' is best understood as a reference to the capacity in which the state
20 officer is sued, not the capacity in which the officer inflicts the alleged injury.").

1 Fourteenth Amendment against Defendant Hull.¹⁰ See ECF No. 9. A cause of
 2 action pursuant to section 1983 may be maintained “against any person acting
 3 under color of law who deprives another ‘of any rights, privileges, or immunities
 4 secured by the Constitution and laws’ of the United States.” *S. Cal. Gas Co. v.*
 5 *City of Santa Ana*, 336 F.3d 885, 887 (9th Cir. 2003) (quoting 42 U.S.C. § 1983).
 6 The rights guaranteed by section 1983 are “liberally and beneficently construed.”
 7 *Dennis v. Higgins*, 498 U.S. 439, 443 (1991) (quoting *Monell v. N.Y. City Dep’t of*
 8 *Soc. Servs.*, 436 U.S. 658, 684 (1978)).

9 **1. Unlawful Seizure**

10 The Fourth Amendment protects “[t]he right of the people to be secure in
 11 their persons, houses, papers, and effects, against unreasonable searches and
 12 seizures.” U.S. Const. amend. IV. “A claim for unlawful arrest is cognizable
 13 under § 1983 as a violation of the Fourth Amendment provided the arrest was
 14 without probable cause or other justification.” *Lacey v. Maricopa Cnty.*, 693 F.3d
 15 896, 918 (9th Cir. 2012) (en banc) (quoting *Dubner v. City & Cnty. of S.F.*, 266

16 ¹⁰ To the extent Plaintiff’s malicious prosecution claim is brought under section
 17 1983, she has “not alleged that any process resulting in the initiation of criminal
 18 proceedings followed [her] arrest” and she cannot “simply recast the false arrest
 19 claim as a claim for malicious prosecution.” See *Lacey v. Maricopa Cnty.*, 693
 20 F.3d 918, 920 (9th Cir. 2012) (en banc).

1 F.3d 959, 964 (9th Cir. 2001)). “Probable cause exists when, under the totality of
2 the circumstances known to the arresting officers, a prudent person would have
3 concluded that there was a fair probability that a crime was committed.” *Gasho v.*
4 *United States*, 39 F.3d 1420, 1428 (9th Cir. 1994) (internal quotation marks
5 omitted).

6 This Court finds there can be no genuine dispute that Defendant Stephan had
7 probable cause to arrest Plaintiff for driving under the influence in violation of
8 Washington state law. Under Washington law, a person may not operate a motor
9 vehicle while under the influence of or affected by intoxicating liquor, marijuana,
10 or any other drug. RCW 46.61.502(1)(c). At the time of Plaintiff’s arrest, the
11 following facts and circumstances were within Defendant Stephan’s knowledge:
12 (1) Plaintiff drove into the oncoming traffic lane and “swerved” across the freeway
13 lanes without use of a turn signal; (2) when Defendant Stephan made contact with
14 Plaintiff, Plaintiff exhibited slurred speech and the inability to maintain balance
15 and walk in a straight line; and (3) before arrest, Plaintiff refused to complete field
16 sobriety tests. Plaintiff does not dispute that she “swerved” while driving on the
17 freeway, that Defendant Stephan pulled her over shortly thereafter, and that she
18 exhibited slurred speech and impaired coordination. Although Plaintiff’s breath
19 and blood tests, post-arrest, demonstrated that Plaintiff was not in fact under the
20 influence of any intoxicant, this after-the-fact determination does not diminish the

1 probable cause that existed at the time of arrest. Accordingly, because Defendant
2 Stephan had probable cause to arrest Plaintiff based on the undisputed facts, this
3 Court grants summary judgment to Defendant Stephan on this claim.

4 **2. Involuntary Commitment**

5 “Courts repeatedly have echoed the Supreme Court’s admonition that
6 involuntary civil commitment to a mental hospital represents a ‘massive
7 curtailment of liberty’ and that such a commitment therefore must comport with
8 the requirements of due process.” *Jensen v. Lane Cnty.*, 312 F.3d 1145, 1146 (9th
9 Cir. 2002) (citing *Vitek v. Jones*, 445 U.S. 480, 491-92 (1980)). “In general, due
10 process precludes the involuntary hospitalization of a person who is not both
11 mentally ill and a danger to one’s self or to others.” *Id.* at 1147 (citing *O’Connor*
12 *v. Donaldson*, 422 U.S. 563, 575 (1975)).

13 Defendant Hull is entitled to a qualified immunity analysis on this claim.
14 Qualified immunity shields government actors from civil damages unless their
15 conduct violates “clearly established statutory or constitutional rights of which a
16 reasonable person would have known.” *Pearson v. Callahan*, 555 U.S. 223, 231
17 (2009). “Qualified immunity balances two important interests—the need to hold
18 public officials accountable when they exercise power irresponsibly and the need
19 to shield officials from harassment, distraction, and liability when they perform
20 their duties reasonably.” *Id.*

1 In evaluating a state actor's assertion of qualified immunity, a court must
2 determine (1) whether the facts, viewed in the light most favorable to the plaintiff,
3 show that the defendant's conduct violated a constitutional right; and (2) whether
4 the right was clearly established at the time of the alleged violation such that a
5 reasonable person in the defendant's position would have understood that his
6 actions violated that right. *Saucier v. Katz*, 533 U.S. 194, 201 (2001), *overruled in*
7 *part by Pearson*, 555 U.S. 223. To determine whether a right is "clearly
8 established," courts consider the following:

9 [The contours of the right] must be sufficiently clear that a reasonable
10 official would understand that what he is doing violates that right.
11 This is not to say that an official action is protected by qualified
12 immunity unless the very action in question has previously been held
unlawful; but it is to say that in the light of pre-existing law the
unlawfulness must be apparent.

13 *Hope v. Pelzer*, 536 U.S. 730, 739 (2002) (internal citations omitted). A court
14 may, within its discretion, decide which of the two prongs should be addressed first
15 in light of the particular circumstances of the case. *Pearson*, 555 U.S. at 236. If
16 the answer to either inquiry is "no," then the defendant is entitled to qualified
17 immunity and may not be held personally liable for his or her conduct. *Glenn v.*
18 *Wash. Cnty.*, 673 F.3d 864, 870 (9th Cir. 2011).¹¹

19 ¹¹ When determining whether there are any genuine issues of material fact at the
20 summary judgment stage in the context of qualified immunity, "determinations that

1 For purposes of the qualified immunity analysis, the Ninth Circuit’s opinion
2 in *Jensen v. Lane County* constitutes clearly established law. In *Jensen*, the Ninth
3 Circuit addressed what level of certainty due process requires in the context of an
4 involuntary, short-term emergency commitment: “In the context of a short-term
5 emergency hold . . . by definition there is no prior adjudication of the detainee’s
6 condition, because the very purpose of the hold is to evaluate whether the person is
7 mentally ill and dangerous and thus should be subjected to such an adjudication.”
8 312 F.3d at 1147. Nonetheless, “due process does demand that the decision to
9 order an involuntary emergency commitment be made in accordance with a
10 standard that promises some reasonable degree of accuracy.” *Id.* To comport with
11 due process, mental health professionals must exercise judgment “on the basis of
12 *substantive and procedural criteria that are not substantially below the standards*
13

14 turn on questions of law, such as whether the officers had probable cause or
15 reasonable suspicion to support their actions, are appropriately decided by the
16 court.” *Hopkins v. Bonvicino*, 573 F.3d 752, 763 (9th Cir. 2009) (citing *Act*
17 *Up!/Portland v. Bagley*, 988 F.2d 868, 873 (9th Cir. 1993)). “However, a trial
18 court should not grant summary judgment when there is a genuine dispute as to the
19 ‘facts and circumstances within an officer’s knowledge’ or ‘what the officer and
20 claimant did or failed to do.’” *Id.*

1 *generally accepted in the medical community.” Id. (quoting Rodriguez v. City of*
2 *N.Y., 72 F.3d 1051, 1063 (2d Cir. 1995)).*

3 Washington’s involuntary commitment statutory scheme, which has been
4 held to be facially sufficient to meet the requirements of due process and under
5 which Plaintiff was detained, *see In re Detention of June Johnson*, 179 Wash.App.
6 579, 591 (2014), provides for the following process regarding involuntary
7 emergency commitment:

8 When a designated mental health professional receives information
9 alleging that a person, as the result of a mental disorder, presents an
10 imminent likelihood of serious harm,¹² or is in imminent danger
11 because of being gravely disabled, after investigation and evaluation
12 of the specific facts alleged and of the reliability and credibility of the
13 person or persons providing the information if any, the designated
14 mental health professional may take such person, or cause by oral or
15 written order such person to be taken into emergency custody in an
16 evaluation and treatment facility for not more than seventy-two hours
17 as described in RCW 71.05.180.

16 ¹² RCW 71.05.020(25) defines “likelihood of serious harm” as a “substantial
17 risk . . . that [p]hysical harm will be inflicted by a person upon his or her own
18 person, as evidenced by threats or attempts to commit suicide or inflict physical
19 harm on oneself.” “Imminent” is when harm can “occur at any moment or near at
20 hand.” RCW 71.05.020(20).

1 RCW 71.05.153(1).¹³ The mental health professional must examine the person
2 within three hours of arrival at the mental health facility; a determination of
3 whether the person meets emergency detention criteria must be made within twelve
4 hours. RCW 71.05.153(4). In conducting an evaluation under RCW 71.05.153, a
5 mental health professional “must consult with any examining emergency physician
6 regarding the physician’s observations and opinions related to the person’s
7 condition, and whether, in view of the physician, detention is appropriate;” “take
8 serious consideration of observations and opinions by examining emergency room
9 physicians in determining whether detention . . . is appropriate;” and document
10 such consultation. RCW 71.05.154. Further, the mental health professional must,
11 on the judicial day following detention, file a petition for initial detention along
12 with other required filings. RCW 71.05.160.

13 Whether or not Defendant Hull violated Plaintiff’s due process rights when
14 she made the decision to detain Plaintiff, Defendant Hull is entitled to qualified
15 immunity. In light of the undisputed facts, no reasonable official in the shoes of
16 Defendant Hull would have known her decision to detain violated Plaintiff’s
17 clearly established due process rights under *Jensen*.

18
19

¹³ Plaintiff does not challenge the constitutional sufficiency of Washington’s
20 involuntary commitment statute.

1 First, both the Washington State Patrol and Dr. Mitchell informed Defendant
2 Hull that Plaintiff presented a suicide risk and thus an imminent likelihood of
3 serious harm to herself. *See* RCW 71.05.020(20), (25). Although Plaintiff
4 adamantly denies that she was attempting to commit suicide or that she ever said
5 anything to this effect, she does not dispute that this information was relayed to
6 Defendant Hull. Further, Plaintiff concedes that her position on the I-90 overpass
7 gave the appearance of someone who was going to jump—indeed, the first
8 comment she made to the officers was that she was not going to jump—and she
9 further admits that, during her examination with Dr. Mitchell, she “elaborated on
10 all the heavy issues” with which she had been dealing. Second, Defendant Hull
11 personally interviewed Plaintiff and conducted an independent investigation into
12 Plaintiff’s mental health history, contacting other health agencies in Montana and
13 Washington in an attempt to gain diagnostic information regarding Plaintiff’s
14 condition. Third, Defendant Hull consulted with Dr. Mitchell, an examining
15 physician, to help form her provisional diagnosis and ultimately determine
16 detention was appropriate. Finally, Defendant Hull promptly filed a petition for
17 detention with the appropriate court following Plaintiff’s transfer to Lourdes.

18 Plaintiff’s opposition misses the mark. Plaintiff’s declaration—the only
19 evidence presented to support Plaintiff’s position—fails to present a genuine
20 dispute as to whether Defendant Hull’s decision violated clearly established law.

1 Although Plaintiff unyieldingly asserts that she never told anyone she was
2 contemplating suicide, her declaration fails to create a genuine dispute as to
3 whether she *presented* herself as someone who may pose an imminent and serious
4 risk of harm to herself and thus may need further mental health treatment. Indeed,
5 Plaintiff admits she presented herself in this way to get the attention of the police.
6 *See e.g.*, ECF Nos. 9 at 3 (“I knew if I stood on the over pass, eventually the police
7 would come to prevent a person from jumping.”). No trier-of-fact, based on the
8 evidence presented, could find otherwise. *See Anderson v. Liberty Lobby, Inc.*,
9 477 U.S. at 248 (explaining that a dispute about a material fact is “genuine” if the
10 evidence is such that a trier-of-fact could return a verdict for the nonmoving party).

11 Thus, because no reasonable official in the shoes of Defendant Hull would
12 have known her decision to detain Plaintiff violated Plaintiff’s due process rights.
13 Defendant Hull is entitled to qualified immunity, and summary judgment on this
14 claim is appropriate.

15 **B. State Law Claim for Malicious Prosecution**

16 Before commencing suit against a government entity in Washington, a
17 plaintiff is required to file a standard tort claim notice with the appropriate entity.
18 For suing a local governmental entity, a party must file a claim for damages with
19 the entity before commencing a tort action. RCW 4.96.020. This provision applies
20 to claims against the local entity itself, as well as its officers, employees, or

1 volunteers. RCW 4.96.020(1). RCW 4.96.020 sets forth the minimum information
2 a standard tort claim form must contain. Similarly, for suing a state entity, a party
3 must file a claim for damages with the risk management division before
4 commencing a tort action against the state or any state officer, employee, or
5 volunteer. RCW 4.92.110. Under both provisions, the plaintiff must then wait
6 sixty calendar days before commencing suit. RCW 4.92.110, 4.96.020(4). “The
7 purpose of claim filing statutes is to ‘allow government entities time to investigate,
8 evaluate, and settle claims.’ *Lee v. Metro. Parks Tacoma*, 183 Wash. App. 961,
9 968 (2014). Substantial compliance with the relevant claim filing statute—
10 meaning that the “statute has been followed sufficiently so as to carry out the intent
11 for which the statute was adopted”—is sufficient. *Id.* at 967-68. However, failure
12 to comply with the statute is grounds for dismissal. *Mercer v. State*, 48 Wash.App.
13 496, 498 (1987) (“The procedures of this statute are mandatory, and compliance is
14 a condition precedent to recovery.”).

15 Here, Defendants allege that Plaintiff failed to demonstrate substantial
16 compliance with the relevant statutory provisions for suing local and state
17 governmental entities. In response, Plaintiff has not presented any evidence
18 showing that she substantially complied with these statutes. The only evidence
19 showing any compliance is a standard tort claim notice form, attached to Plaintiff’s
20 Complaint, which Plaintiff drafted against the state of Washington, ECF No. 9 at

11; however, there is no evidence to show that this form was ever filed with the proper agency. Regarding her remaining state claim against Defendant Hull, Plaintiff has presented no evidence of filing a standard tort claims notice form with Adams County, Defendant Hull's employer.¹⁴ Accordingly, Plaintiff's remaining claim for malicious prosecution, to the extent it is alleged against Defendant Hull or Defendant Stephan, is dismissed because of her lack of compliance with Washington's claim filing statutes.¹⁵

¹⁴ In her briefing, Plaintiff asserts that she also has a state law claim for negligence. ECF No. 76 at 1. However, her Complaint does not allege any facts to support such a cause of action. Even if her Complaint can be construed to have alleged such a cause of action, Plaintiff's failure to present any evidence of filing a standard tort claims notice form would prove equally fatal to a claim for negligence. Moreover, Defendant Hull, a mental health professional, would be immune from such a claim so long as she performed her duty "in good faith and without gross negligence." RCW 71.05.120; *Estate of Davis v. State Dep't of Corrections*, 127 Wash. App. 833, 840 (2005). Plaintiff has put forth no argument that Hull acted in bad faith or with gross negligence.

¹⁵ Alternatively, even assuming Plaintiff's form was filed with the State and substantially complied with the statute's content requirements, any malicious prosecution claim against Defendant Stephan is properly dismissed considering (1)

IT IS ORDERED:

1. Defendants Washington State Patrol and Dustin Stephan's Motion and Memorandum for Summary Judgment (ECF No. 60) is **GRANTED**. Defendants Washington State Patrol and Stephan are dismissed.

2. Defendant Pat Hull's Motion for Summary Judgment (ECF No. 66) is **GRANTED**. Defendant Hull is dismissed.

The District Court Executive is directed to enter this Order, provide copies to counsel, and **TERMINATE Defendants Washington State Patrol, Stephan, and Hull** from the caption.

DATED June 19, 2015.



Thomas O. Rice
THOMAS O. RICE
United States District Judge

no suit, civil or criminal, has been initiated against Plaintiff, and (2) Defendant Stephan had probable cause, as detailed above, to arrest Plaintiff for driving under the influence, which is an absolute defense. *See Clark v. Baines*, 150 Wash.2d 905, 912 (2004) (en banc) (“[P]roof of probable cause is an absolute defense [to a claim for malicious prosecution].”).